

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

05 11249 GAO

BENSLEY CONSTRUCTION, INC.  
on its own behalf and on behalf of all others  
similarly situated,

Plaintiff,

v.

MARSH & MCLENNAN COMPANIES, INC.,  
MARSH, INC., ACE USA, ACE INA,  
AMERICAN INTERNATIONAL GROUP,  
AMERICAN REINSURANCE COMPANY,  
ARTHUR J. GALLAGHER & CO., HILB  
ROGAL & HOBBS, COMPANY, WILLIS  
GROUP HOLDINGS, LTD., WILLIS NORTH  
AMERICA INC., WILLIS GROUP LTD.,  
UNIVERSAL LIFE RESOURCES,  
UNIVERSAL LIFE RESOURCES, INC. (d/b/a  
ULR INSURANCE SERVICES, INC.), THE  
CHUBB CORPORATION, USI HOLDINGS,  
INC., METLIFE, INC., PRUDENTIAL  
FINANCIAL, INC., UNUMPROVIDENT  
CORPORATION, THE ST. PAUL TRAVELERS  
COMPANIES, INC., ZURICH AMERICAN  
INSURANCE COMPANY, LIBERTY MUTUAL  
GROUP INC., LIBERTY MUTUAL  
INSURANCE COMPANY, LIBERTY MUTUAL  
FIRE INSURANCE COMPANY, EMPLOYERS  
INSURANCE COMPANY OF WAUSAU, and  
ST. JAMES INSURANCE COMPANY LTD.,

Defendants.

MAGISTRATE JUDGE

Civil Action No.

RECEIPT # 65018  
AMOUNT \$ 250  
SUMMONS ISSUED MA  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPTY. CLK. [Signature]  
DATE 6/15/05

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1367, 1441, 1446, and 1453, defendants  
Marsh & McLennan Companies, Inc., and Marsh, Inc. (collectively "Marsh"),<sup>1</sup> with

<sup>1</sup> In filing these papers, Marsh reserves any and all rights and defenses available under Rule 12 of the Federal Rules of Civil Procedure, including but not limited to, arguments concerning ineffective service of process and that Marsh is not a proper party to this action.

the consent of the Defendants whom Marsh does not allege to have been fraudulently or improperly joined, hereby notices the removal to this Court of Case No. ESCV-200500277 from the Superior Court for Essex County, Commonwealth of Massachusetts.<sup>2</sup> In support of this Notice, the Defendants state:

## I. INTRODUCTION

1. On February 17, 2005, the day before the President signed into law the Class Action Fairness Act, PUB. L. 109-2, Plaintiff filed (but never served) a placeholder Complaint, seeking to avoid litigating this case in federal court with a series of nearly identical cases that have been transferred by the Judicial Panel on Multidistrict Litigation to the District of New Jersey for consolidated and coordinated pretrial proceedings (the “MDL litigation”). In accordance with 28 U.S.C. § 1446(a), a copy of the original Complaint is attached as Exhibit A and a copy of the Amended Complaint is attached as Exhibit B.

2. The MDL litigation, *In re Insurance Brokerage Antitrust Litigation*, MDL # 1663, Civil No. 2:04-cv-5184, is pending in the District of New Jersey (the “MDL Court”) and involves a putative nationwide class on behalf of insurance purchasers, asserting some of the very same claims against some of the same defendants as in the Amended Complaint herein. The underlying factual allegations, while stated differently, are virtually identical in substance. Twenty “contingent commission” class actions in federal court are consolidated for adjudication. With the Massachusetts action now having been removed to federal court, it should, likewise, be subject to transfer and consolidation of proceedings in the District of New Jersey as part of the same MDL.

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<sup>2</sup> While these other Defendants have consented to the Notice of Removal, neither their consent nor the consent of any of the other Defendants is required for purposes of removal pursuant to the Class Action Fairness Act (“CAFA”). See 28 U.S.C. § 1453(b).

3. The day before Plaintiff filed the original Complaint in this matter -- on February 16, 2005 -- Plaintiff's counsel filed a nearly identical complaint in a Florida state court, naming many of the same defendants as were named in the instant case, and virtually mimicking the claims that have been asserted in the instant case. A copy of the Florida complaint is attached hereto as Exhibit C (Complaint in *Palm Tree Computer Sys., Inc. v. Delta Research Inst., Inc.*, filed in Seminole County, Florida). The Florida case was removed to the Middle District of Florida based upon, *inter alia*, the Securities Litigation Uniform Standards Act ("SLUSA"), *see* Ex. D (Notice of Removal in *Palm Tree Computer Sys., Inc. v. Delta Research Inst., Inc.*, Civ. Action No. 6:05-CV-422-ORL-22KRS), and, thereafter, briefing commenced on a motion to remand. A conditional transfer order in that case is currently pending before the MDL Panel. If entered, *Palm Tree Computer Systems* will also be transferred to the District of New Jersey and consolidated with the MDL litigation.

4. After the principal briefing in the Florida litigation was finished, on May 16, 2005, eighty-eight days after filing the original Complaint in this case (and two days before the original Complaint would be automatically dismissed pursuant to Mass. R. Civ. Proc. 4(j)), Plaintiff filed an Amended Complaint in Massachusetts. *See* Ex. B. The Amended Complaint removed certain defendants and attempts to omit certain SLUSA allegations so as to evade federal jurisdiction. *Compare, e.g.*, Ex. A at ¶ 39 (original Complaint defining "Insurance Products") *with* Ex. B at ¶ 43 (amended Complaint defines "Insurance Products" to exclude "any other insurance product that could be characterized as a 'covered security' under [SLUSA]").

5. In a further effort to avoid federal jurisdiction, Plaintiff has fraudulently joined Liberty Mutual Group Inc., and its subsidiaries, referred to as "the Liberty Defendants," parties who have no nexus to the named plaintiff in this action but who provide Plaintiff with the ability to allege the existence of a purported

defendant having a Massachusetts principal place of business. Indeed, despite filing nearly the same matter in Florida, Plaintiff's counsel named the Liberty Defendants in the instant matter, while ignoring them in *Palm Tree*, despite the fact that Plaintiff makes *no* allegations that it has any connection whatsoever to the Liberty Defendants. In their haste to file prior to the Class Action Fairness Act deadline, Plaintiff also fraudulently or improperly named numerous other parties, including The Chubb Corporation, with whom the Plaintiff has no connection and which is alleged to have been a holding corporation, but which never actually sold an insurance product. See Ex. B ¶ 28. For purposes of this Notice, the Court need only consider the fraudulent joinder of The Chubb Corporation and the Liberty Defendants.

6. Plaintiff also repeatedly disclaims all damages, *on behalf of a putative class*, above \$74,999.00 for any claimant. See Ex. B at ¶¶ 47, 133, 142, 155, 163, 170. Plaintiff's self-serving efforts to artificially and arbitrarily limit each claimant within the entire putative class to less than \$75,000 in damages is yet another effort to evade, at any and all cost, Federal jurisdiction of a claim that belongs in Federal court with the nearly two dozen other similar claims now before the MDL Court.

7. Indeed, such attempts to shoehorn this case into state court by using a self-imposed artificial and arbitrary limitation are clearly at odds with the best interests of the putative class Plaintiff seeks to represent. They also are inconsistent with the common fund Plaintiff seeks to create in the name of a request for "disgorgement" of all the Defendants' "profits." Plaintiff's request for "disgorgement" does not limit the amount sought, going beyond an individualized assessment of damages in seeking disgorgement of all such "profits" for all Defendants. The entire class would have a joint and undivided interest in such "profits." See Ex. B at ¶ 150.



8. Additionally, the MDL Court, where this case belongs, has 20 similar cases before it. The MDL Court was established by order of the Judicial Panel on Multidistrict Litigation on February 17, 2005, when four actions were transferred to Judge Hochberg in the District of New Jersey. *See* Ex. E (MDL Panel Transfer Order). Since that initial order, and the subsequent transfer of over a dozen cases to Judge Hochberg, the MDL Court has appointed lead counsel, set a schedule for filing a Consolidated Amended Complaint, and ordered the date for the commencement of discovery. *See* Ex. F (Order No. 4). The MDL Process, which Plaintiff goes to great lengths to avoid, is already underway.

9. Plaintiff's contrived efforts, as set forth below, cannot avoid the proper removal of this case.

10. No other pleadings, other than the Complaint and the Amended Complaint, have been filed in the state court. There are no other motions currently pending before the Superior Court as of the filing of this Notice of Removal.

11. The Amended Complaint was filed on May 16, 2005 and all Defendants were first served with process thereafter. Therefore, this Notice of Removal is timely filed within 30 days of service. 28 U.S.C. § 1446(b).

## II. DIVERSITY JURISDICTION

12. This action may be removed to this Court pursuant to 28 U.S.C. § 1441(b) if diversity jurisdiction exists under 28 U.S.C. § 1332(a) and "if none of the parties in interest *properly joined* and served as defendants is a citizen of" Massachusetts. 28 U.S.C. § 1441(b) (emphasis added). The only Defendants who are citizens of Massachusetts are the Liberty Defendants and, as explained below, they were not properly joined.

13. Plaintiff is a Massachusetts corporation with a principal place of business in Cambridge, Massachusetts. Ex. B at ¶ 12, Ex. G (Annual Corporation Report for Bensley Construction).

14. Other than the Liberty Defendants, all of the other named Defendants are neither Massachusetts companies nor do any of these defendants have a principal place of business within Massachusetts. *See* Ex. B at ¶¶ 14-21 & 23-29.

15. However, the fraudulently joined Liberty Defendants are Massachusetts corporations and/or have their principal places of business in Massachusetts. *Id.* at ¶ 22.

16. A party who is fraudulently joined to defeat removal need not join in the removal petition and is disregarded in determining diversity of citizenship for purposes of § 1332(a) and citizenship for purposes of § 1441(b). *Polyplastics, Inc. v. Transconex, Inc.*, 713 F.2d 875, 877 (1st Cir. 1983); *Carey v. Board of Gov. of Kenrwood Co. Club*, 337 F. Supp.2d 339, 341 (D.Mass. 2004) (“If, however, a request for remand is based upon a fraudulent joinder of a non-diverse defendant without a real connection to the controversy, ‘the right of removal cannot be defeated’ and remand is inappropriate.”) (citation omitted).

17. “A joinder is considered fraudulent if it is a sham and a device used to join a party ‘without any reasonable basis in fact and without any purpose to prosecute the cause in good faith.’” *Carey*, 337 F. Supp.2d at 341-42; *see also Mills v. Allegiance Healthcare Corp.*, 178 F. Supp.2d 1, 5 (D.Mass. 2001) (quoting *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 98 (1921)).

18. Plaintiff fraudulently joined the Liberty Defendants in an attempt to defeat diversity. Plaintiff only mentions the Liberty Defendants once in the forty-eight page, 170 paragraph complaint, and only then to introduce them as a party to the suit. *See* Ex. B at ¶ 22.

19. Plaintiff did not purchase insurance from the Liberty Defendants and has no relationship -- contractual or otherwise -- with any of the Liberty Defendants. *See id.* at ¶¶ 12-13 (describing Plaintiff's alleged relationship with other defendants).

20. None of the six counts against the Liberty Defendants state a reasonable claim upon which relief could be granted.

- A. Plaintiff's "Breach of Fiduciary Duty" claim fails because Plaintiff and the Liberty Defendants had no relationship whatsoever and, therefore, the Liberty Defendants owed no fiduciary duties to Plaintiff. *Hanover Ins. Co. v. Sutton*, 46 Mass.App.Ct. 153, 164, 705 N.E.2d 279, 288 (Mass. App. Ct. 1999) (noting the elements of a breach of fiduciary duty claim as (1) existence of a fiduciary duty based upon the relationship of the parties, (2) breach, (3) damages, and (4) a causal connection between breach of the duty and the damages); *Ward v. Costello*, 15 Mass.L.Rptr. 644, 2002 WL 31973253, at \*7 (Mass. Super. Dec. 17, 2002) ("In order for a party to be a fiduciary, there must be mutual consent.") (citation omitted).
- B. Plaintiff's "Unjust Enrichment" claim fails, *inter alia*, because there is no "causal nexus" alleged between any monies the Liberty Defendants received and any harm done to Plaintiff -- indeed, there is no relationship whatsoever alleged between the Plaintiff and the Liberty Defendants. *See Holmes Products Corp. v. Dana Lighting, Inc.*, 958 F.Supp. 27, 36 (D. Mass. 1997) (noting need for "causal nexus").
- C. Plaintiff's "Aiding and Abetting Breach of Fiduciary Duty" also fails as at no point does Plaintiff allege that the Liberty Defendants "knew of the breach and actively participated in it such that he or she could not reasonably be held to have acted in good faith." *Spinner v. Nutt*, 631 N.E.2d 542, 546 (Mass. 1994). Indeed, Plaintiff cannot make such an allegation as the Liberty Defendants have absolutely no relationship whatsoever to Plaintiff -- there are

no allegations that the Liberty Defendants sold any product, either directly nor through a third party, to Plaintiff nor that Plaintiff had any discussion, dealings, or other involvement with the Liberty Defendants.

D. Likewise, Plaintiff's "Breach of Contract" claim and "Breach of Covenant of Good Faith and Fair Dealing" claim fail because Plaintiff and the Liberty Defendants never entered into any contract nor had any relationship that would be implicated by the covenant of good faith and fair dealing.

E. In all, because Plaintiff has no relationship whatsoever with the Liberty Defendants, Plaintiff fails to state any cause of action against the Liberty Defendants. Their joinder was for the sole purpose of defeating diversity and, thus, was fraudulent.

21. All Defendants, other than the fraudulently joined Liberty Defendants and The Chubb Corporation, consent to this removal. For the reasons stated above, consent for the Liberty Defendants and The Chubb Corporation is not required. See *Polyplastics, Inc.*, 713 F.2d at 877; *Carey*, 337 F. Supp.2d at 341.<sup>3</sup>

22. Additionally, Plaintiff's claims, as alleged, exceed the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a).

23. Despite repeated efforts to artificially limit the amount of damages Plaintiff seeks to recover on behalf of a putative class of all Massachusetts insurance purchasers to an amount below the amount in controversy requirement, Plaintiff seeks in its unjust enrichment claim a broader scope of relief, including

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<sup>3</sup> Consent by any of the other Defendants, however, is not required for removal under CAFA. See 28 U.S.C. § 1453(b).



that the Court “disgorge” “Defendants’ profits from the illegal actions.” Ex. B at ¶ 150.

24. This request for disgorgement above and beyond any contractual damages would create, if ultimately found to be meritorious, a money judgment potentially in the hundreds of millions of dollars in which the entire class, and not any specific individual, would have the same right. *See, e.g., id.* at ¶ 14 (“The Contingent Commission Agreements described herein constituted more than half of Marsh’s \$1.5 billion in earnings in 2003); *id.* (noting the \$850 million settlement between Marsh and the New York Attorney General); *id.* at 16 (alleging Willis’s contingent commission revenue as “at least in the hundreds of millions of dollars during the Class Period”); *id.* at ¶ 17 (alleging Arthur J. Gallagher & Co.’s contingent commission revenue to be “at least in the hundreds of millions”); *id.* at ¶ 18 (alleging USI’s contingent commission revenues to be “at least in the hundreds of millions of dollars during the Class Period”); *see also Durant v. Servicemaster Co.*, 147 F. Supp.2d 744, 750-51 (E.D. Mich. 2001) (holding that “[a]ggregation thus is required of the amount Plaintiffs seek to recover under the theory of unjust enrichment. For that reason, this Court holds that the jurisdictional amount is satisfied, and this Court has diversity jurisdiction over this case.”)

25. The common fund, valued as a whole, determines the amount in controversy. *See Berman v. Narragansett Racing Ass’n*, 414 F.2d 311, 314-15 (1st Cir. 1969) (“The pecuniary result that the judgment would directly produce would be the awarding of a fund of several million dollars to the class. We think it is the amount of the entire fund, and not what each pursewinner’s individual share will eventually be, that determines the amount in controversy here.”).

26. In this case, the total profits from the activities alleged by the Plaintiffs exceed \$75,000 and, indeed, are alleged to exceed “hundreds of millions of dollars during the class period” if not well in excess of a billion dollars. *See, e.g., Ex. B.* at

¶¶ 14, 16-18; *see also id.* at ¶ 14 (noting existence of settlement between Marsh and the New York Attorney General for \$850 million dollars).

27. Therefore, the Defendants whom Marsh does not allege were improperly joined are diverse from the Plaintiff and the amount in controversy is satisfied.

### III. JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT

28. Under the newly-passed Class Action Fairness Act, 28 U.S.C. § 1332(d) was amended to read in pertinent part as follows:

The district courts shall have original jurisdiction of any civil action, in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which – (A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

29. Exceptions to this new rule are contained in 28 U.S.C. § 1332(d)(3)-(5), none of which are applicable here.

30. The Class Action Fairness Act also added a new 28 U.S.C. § 1453, providing that a Class Action can be removed by any defendant.

31. This case is removable under the Class Action Fairness Act because at least one member of the putative class of plaintiffs (e.g., the named Plaintiff) is a citizen of a state (i.e., Massachusetts) different from at least one defendant. The named Plaintiff and all putative class members are citizens of the Commonwealth of Massachusetts while all Defendants other than the Liberty Defendants are citizens of other states. *See Ex. B at §§ 13-21 & 23-29.*

32. Section 9 of the Act provides, “The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.” 28 U.S.C. §1332 Note.

33. For at least two independent reasons, this case was not “commenced”

before the Class Action Fairness Act.

34. First, under Massachusetts Rules, a case is not “commenced” until the Complaint and summons are mailed to or filed in the proper court. As the Massachusetts Rules states:

A civil action is commenced by (1) mailing to the *clerk of the proper court* by certified or registered mail a complaint and an entry fee prescribed by law, or (2) filing such complaint and an entry fee *with such clerk*.

Mass. R. Civ. Proc. 3 (emphasis added).

35. As the official Reporters’ Notes to that rule make clear, “[t]he phrase ‘proper court’ means the court in which requirements of venue and jurisdiction . . . are met.” The action below, however, was not filed in a court with the proper venue. For venue to be proper, a case with a Massachusetts resident must be filed in “in the county where one of them lives or has his usual place of business.” Mass. Gen. L. c. 223 § 1. This case was filed in the county of Essex. However, Plaintiff has not alleged that any party lives or has its usual place of business in Essex County. *See* Ex. B at ¶¶ 12-29, 49. No defendant has its usual place of business in Essex County. Furthermore, the named Plaintiff has its usual place of business in Middlesex County. *See* Ex. E (Annual Corporation Report for Bensley Construction). Therefore, venue was improper in the case as filed in Essex County and the case had not “commenced,” pursuant to Mass. R. Civ. P. 3, prior to the enactment of the Class Action Fairness Act.

36. Second, a number of courts have held that the term “commenced” means the date of removal, not the date the case was initially filed in state court. *See, e.g., Lorraine Motors, Inc. v. Aetna Casualty and Surety Co.*, 166 F. Supp. 319, (E.D.N.Y. 1958) (term “commenced” referred to date of removal, noting that “it is not at all unusual for the Congress to use the term ‘commenced’ to describe the institution in

federal court of a case which has been removed from State court”); *see also Hunt v. Transport Indem. Ins. Co.*, No. 90-00041, 1990 WL 192483, at \*2-3 (D. Hawaii July 30, 1990) (holding that “sounder view” was to construe the term “commenced” in the context of 1989 amendment to 28 U.S.C. §1332, which raised jurisdictional minimum from \$10,000 to \$50,000, to mean the date of removal, not the date of filing in state court); *Sayers v. Sears, Roebuck and Co.*, 732 F. Supp. 654 (W.D. Va. 1990) (same). . On these grounds, as well, the case was not “commenced” until May 2005, well after the enactment of the Class Action Fairness Act.<sup>4</sup>

37. Furthermore, this Court is empowered to exercise supplemental jurisdiction over this action pursuant to 28 U.S.C. §1367. The Class Action Fairness Act confers federal jurisdiction over, *inter alia*, the newly added claims in the Amended Complaint, which were not asserted prior to the enactment of the Class Action Fairness Act. *See Knudsen v. Liberty Mutual Insur. Co.*, No. 05-8010, 2005 WL 1389059, \*2 (7th Cir. June 7, 2005) (stating that claims added after the Class Action Fairness Act’s date of enactment that are “sufficiently independent of the original contentions . . . must be treated as fresh litigation” and are removable) This Court should assert jurisdiction over those additional claims that were not originally stated in the un-served original Complaint. Additionally, the Court should assert supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over all other claims.

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<sup>4</sup> The holdings in *Pritchett v. Office Depot, Inc.*, 404 F.3d 1232 (10th Cir. 2005), and *Knudsen v. Liberty Mutual Insur. Co.*, No. 05-8010, 2005 WL 1389059 (7th Cir. June 7, 2005) are not to the contrary. In fact, the Seventh Circuit in *Knudsen* expressly recognized that there may very well be circumstances under which a suit can be “commenced” for “federal [CAFA] purposes even if it bears an old docket number for state purposes.” *Id.* at \*3. Plaintiffs’ gamesmanship in the current case has brought about the type of circumstance envisioned by the *Knudsen* court. By waiting to serve process upon the defendants until well after CAFA was enacted, plaintiffs have opened up the type of “new window of removal” cited by *Knudsen* that commences a case for CAFA purposes. *Id.*



38. As set forth above, this Court, therefore, has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a), and removal of the action to this Court is proper pursuant to 28 U.S.C. §§ 1441(a) and 1453(b). For these reasons and in the interests of judicial economy, efficiency and consistency of adjudication, this case should be heard in Federal Court along with the nearly two dozen other nearly identical cases consolidated in the MDL litigation.

39. Pursuant to 28 U.S.C. §1446(d), Marsh states that it shall promptly file a copy of this Notice with the Clerk of the Superior Court for Essex County, Commonwealth of Massachusetts.

WHEREFORE, Marsh hereby removes this action to this Honorable Court.

Marsh & McLennan Companies, Inc.  
Marsh Inc.,

By their attorneys,

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Dated: June 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following by hand-delivery and/or first-class mail on June 15, 2005:

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Joshua Vitullo

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

05 11 30 GAO

BENSLEY CONSTRUCTION, INC.  
on its own behalf and on behalf of all others  
similarly situated,

Plaintiff,

v.

MARSH & MCLENNAN COMPANIES, INC.,  
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AMERICAN INTERNATIONAL GROUP,  
AMERICAN REINSURANCE COMPANY,  
ARTHUR J. GALLAGHER & CO., HILB  
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CORPORATION, THE ST. PAUL TRAVELERS  
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INSURANCE COMPANY, LIBERTY MUTUAL  
GROUP INC., LIBERTY MUTUAL  
INSURANCE COMPANY, LIBERTY MUTUAL  
FIRE INSURANCE COMPANY, EMPLOYERS  
INSURANCE COMPANY OF WAUSAU, and  
ST. JAMES INSURANCE COMPANY LTD.,

Defendants.

Civil Action No. \_\_\_\_\_

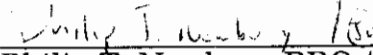
**CONSENT TO REMOVAL**

The Undersigned hereby consent to the Notice of Removal filed this date in  
the above-captioned matter.<sup>1</sup>

<sup>1</sup> In filing this consent, the undersigned reserve any and all rights and defenses available under Rule 12 of the Federal Rules of Civil Procedure, including but not limited to, arguments concerning ineffective service of process, personal jurisdiction, and that any defendant is not a proper party to this action.

ACE USA  
ACE INA,

By their attorneys,

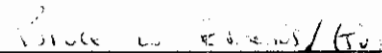
  
Philip T. Newbury BBO #370070  
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860-249-1361

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Zurich American Insurance Company,

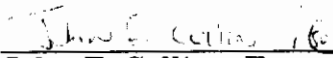
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Boston, MA 02110  
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American Re-Insurance Company,

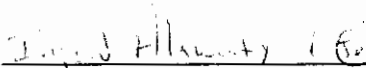
By its attorneys,

 16

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Hilb Rogal & Hobbs, Company,

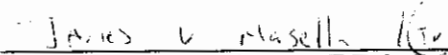
By its attorneys,

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Willis Group Holdings, Ltd.  
Willis North America Inc.  
Willis Group Ltd.,

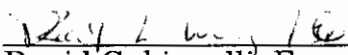
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By its attorneys,

Ian Crawford / B

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The St. Paul Travelers Companies, Inc.

By its attorneys,

Paul C. Curnin /s/

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Simpson Thacher & Bartlett LLP  
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Dated: June 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following by hand-delivery and first-class mail on June 15, 2005:

Bensley Construction Inc.

Kenneth G. Gilman  
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Marsh, Inc

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The Chubb Corporation

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Liberty Mutual Group Inc.  
Liberty Mutual Insur. Company  
Liberty Mutual Fire Insur. Company  
Employers Insur. Co. Of Wausau  
St. James Insurance Company Ltd.,

Ralph T. LePore, III, Esq.  
James M. Tierney, Esq.  
Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116

\_\_\_\_\_  
Joshua Vitullo

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Bensley Construction Corp v. Marsh McLennan et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,  
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,  
380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,  
690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joshua VitelloADDRESS ~~150~~ Bingham McCutchen LLP 150 Federal St, Boston MA 02110TELEPHONE NO. 617 951-8103

951



JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

## DEFENDANTS

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332, 1367, 1441, 1446, 1453

Brief description of cause:

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

## DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/15/05

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_